

may be adjusted for the purpose of setting pay under NSPS. The adjustment will take into account the shorter work year applicable to the teacher position. The adjustment may not exceed 20 percent of the existing annual base salary rate of the teaching position.

§ 9901.352 Setting an employee's starting pay.

(a) Subject to the requirements of this section, the Secretary may set the starting base salary rate for individuals who are newly appointed or reappointed to the Federal service anywhere within the rate range of the assigned pay band (subject to any applicable control points). Pay will be set based upon the following considerations:

- (1) Labor market considerations (*i.e.*, availability of candidates and labor market rates);
- (2) Specialized skills, knowledge, and/or education possessed by the employee in relation to the requirements of the position;
- (3) Critical mission or business requirement(s);
- (4) Salaries of other employees in the organization performing similar work; and
- (5) Current salary of the candidate.

(b) For the purposes of this section, "newly appointed" means those individuals who have not previously been employed in the Federal service—*i.e.*, this is their first Federal appointment. The term "reappointed" means those individuals who have been previously employed in the Federal service and have been separated from the Federal service for at least 1 full workday immediately before employment in an NSPS position. The term "Federal service" includes civilian service as an employee of any entity of the Federal Government, including the judicial branch, legislative branch, and executive branch (including Government corporations, the Postal Regulatory Commission, the U.S. Postal Service and any nonappropriated fund (NAF) instrumentality described in 5 U.S.C. 2105(c)).

§ 9901.353 Setting pay upon reassignment.

(a)(1) A reassignment occurs when an employee moves, voluntarily or involuntarily, to a different position or set of duties within his/her pay band or to a position in a comparable pay band, or from a non-NSPS position to an NSPS position at a comparable level of work, on either a temporary or permanent basis. In NSPS, employees may be eligible for an increase or decrease to base salary upon temporary or permanent reassignment as described in this section.

(2) An employee who is reassigned through reduction-in-force (RIF) procedures is not eligible for an increase to base salary under this section (except as necessary to set the employee's rate at the band minimum), but is eligible for an increase under § 9901.351(c)(1). An employee's base salary will be protected by applying pay retention under § 9901.356, if applicable.

(3) A decision to increase an employee's pay under this section will be based on one or more of the following factors:

- (i) A determination that an employee's responsibilities will significantly increase;
- (ii) Critical mission or business requirements;
- (iii) Need to advance multi-functional competencies;
- (iv) Labor market conditions (*i.e.*, availability of candidates and labor market rates);
- (v) Reassignment from non-supervisory to supervisory position;
- (vi) Employee's past and anticipated performance and contribution;
- (vii) Location of position;
- (viii) Specialized skills, knowledge, or education possessed by the employee in relation to those required by the position; and
- (ix) Salaries of other employees in the organization performing similar work.

(b)(1) Except as otherwise provided in paragraph (c) of this section, when an employee is voluntarily reassigned within his/her pay band or to a comparable pay band, an authorized management official may reduce the employee's base salary in any amount determined prior to the reassignment

with the employee's agreement, as long as the employee's base salary does not drop below the minimum of the assigned rate range. In appropriate circumstances, an authorized management official may make approval of a reassignment contingent on the employee's acceptance of a reduced rate. Subject to paragraph (b)(2) of this section, an authorized management official may also increase the employee's current base salary by up to 5 percent (not to exceed the rate range maximum).

(2) The decision to grant a decrease or increase, including the amount of such decrease or increase, as applicable under paragraph (b)(1) of this section, will be reviewed and approved by an official who is at a higher level than the official who made the initial decision, as determined by the Component. At a minimum, the higher-level approval may be no lower than one level above the authorized management official who approved the reassignment unless there is no official at the higher level in the organization. There are no limits to the number of times an employee may be reassigned; however, an employee may only receive up to a total of a 5 percent cumulative increase to base salary in any 12-month period as the result of an employee-initiated action, unless an exception to the 12-month limitation is approved by an authorized management official. The increase will be calculated as a percentage of the employee's base salary at the time the increase takes effect.

(c)(1) Subject to paragraphs (b)(2) and (c)(2) through (c)(5) of this section, as applicable, when an employee is voluntarily reassigned from a position with a targeted local market supplement or from a non-NSPS position (e.g., General Schedule, Federal Wage System, Nonappropriated Fund), an authorized management official will set pay considering the employee's adjusted salary (including any applicable locality pay, special rate supplement, or other equivalent supplement) and any physicians' comparability allowance payable for the position held prior to the reassignment.

(2) An authorized management official may—

(i) Set the employee's new adjusted salary equal to the employee's current adjusted salary plus any physicians' comparability allowance, if applicable, received prior to the reassignment;

(ii) Decrease the employee's adjusted salary by any amount determined prior to the reassignment with the employee's agreement, as long as the employee's base salary does not drop below the minimum of the assigned rate range; or

(iii) Increase the employee's current adjusted salary plus any physicians' comparability allowance, if applicable, by up to 5 percent (subject to the limitation that the resulting base salary may not exceed the rate range maximum).

(3) After setting the employee's NSPS adjusted salary, the adjusted salary will be apportioned between the employee's base salary and the appropriate local market supplement or targeted local market supplement.

(4) If the NSPS adjusted salary is increased beyond the amount of the employee's current adjusted salary plus any physicians' comparability allowance, the percentage of the increase is counted toward the 12-month limitation under paragraph (b) of this section.

(5) When an employee covered by paragraph (c)(1) of this section moves geographically in conjunction with a voluntary reassignment, the employee's current adjusted salary must be recalculated in accordance with the rules at § 9901.351(b) before setting pay under paragraph (c)(2) of this section.

(d)(1) Except as otherwise provided in paragraphs (e) or (f) of this section, when an employee is reassigned via management-directed action within his/her current pay band or to a comparable pay band, an authorized management official will set pay at an amount no less than the employee's current base salary and may increase the employee's current base salary by up to 5 percent. (If the employee's current base salary exceeds the maximum of the new pay band, no increase is provided, and the employee's rate will be set at that maximum rate, or if the employee is eligible, converted to a retained rate as provided in § 9901.356.)

(2) The decision to grant an increase under paragraph (d)(1) of this section, including the amount of such increase, is discretionary and will be reviewed and approved by an official who is at a higher level than the official who made the initial decision, as determined by a Component, unless there is no official at a higher level in the organization. There is no limit to the number of times an employee may be reassigned by management, and the employee is eligible for an increase of up to 5 percent with each reassignment. Any increase associated with a management-directed reassignment does not count toward the 12-month limitation described in paragraph (b) of this section.

(e)(1) Subject to paragraphs (d)(2), (e)(2), (e)(3), and (f) of this section, as applicable, when an employee is reassigned via management-directed action from a position with a targeted local market supplement or from a non-NSPS position (e.g., General Schedule, Federal Wage System, Non-appropriated Fund), an authorized management official will set the employee's new adjusted salary at no less than the employee's adjusted salary (including any applicable locality pay, special rate supplement, or equivalent supplement) plus any physicians' comparability allowance payable for the position held prior to the reassignment, provided the resulting base salary does not exceed the maximum rate of the new pay band. Subject to the same maximum limitation, an authorized management official may also increase the employee's adjusted salary by up to 5 percent.

(2) After setting the employee's NSPS adjusted salary, the adjusted salary will be apportioned between the employee's base salary and the appropriate local market supplement or targeted local market supplement.

(3) When an employee covered by paragraph (e)(1) of this section moves geographically in conjunction with a management-directed reassignment, the employee's current adjusted salary must be recalculated in accordance with the rules in § 9901.351(b) before setting pay under such paragraph (e)(1).

(4) For the purpose of determining whether an employee experienced a reduction in pay under 5 U.S.C. chapter

75 when reassigned from a non-NSPS position under paragraph (e)(1) of this section, § 9901.351(g) applies.

(f) When an employee is involuntarily reduced in pay via reassignment to a comparable pay band through adverse action procedures (as a result of unacceptable performance and/or conduct), the pay reduction must be at least 5 percent, but no more than 10 percent, of an employee's base salary. However, a reduction may be less than 5 percent to prevent the employee's base salary from falling below the minimum rate of the employee's pay band and may be more than 10 percent if a larger reduction is needed to place the employee at the maximum rate of the lower band. An employee's base salary may not be reduced more than once in a 12-month period based on unacceptable performance, conduct, or both. (See also § 9901.343.)

(g) When an employee returns to an NSPS position from a temporary reassignment to another NSPS position, the employee's current base salary rate must be reconstructed as if the employee had not been temporarily reassigned. For this purpose, the employee will be deemed to have received performance pay increases under § 9901.342 and other increases in base salary under §§ 9901.344 and 9901.345 equal to the percentage value of such increases actually received by the employee during the temporary reassignment. However, any such increases must be applied as if the employee were in the position and band held immediately before the temporary reassignment (*i.e.*, using the rate range and any applicable control points for that band). The employee will also be credited with any general salary increases provided during the temporary reassignment that would have been applied to the employee if he or she had continued to hold the position held immediately before that temporary reassignment. A reassignment increase is not authorized when the employee returns to the position from which temporarily reassigned. (See § 9901.342(1) for rules governing pay setting for an employee who returns to an NSPS position after being temporarily assigned to a non-NSPS position.)

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(h) If an employee's temporary reassignment is made permanent, the permanent reassignment is treated as a new reassignment for purposes of applying this section.

(i) When an employee is reassigned to an NSPS supervisory position but later returns to the NSPS position held before that reassignment (or comparable position) because of failure to complete a supervisory probationary period, the employee's base salary rate must be reconstructed as if the employee had not been reassigned. For this purpose, the employee will be deemed to have received performance pay increases under § 9901.342 and other increases in base salary under §§ 9901.344 and 9901.345 equal to the percentage value of such increases actually received by the employee during the reassignment. However, any such increases must be applied as if the employee were in the position and band held immediately before the reassignment (*i.e.*, using the rate range and any applicable control points for that band). The employee will also be credited with any general salary increases provided during the reassignment that would have been applied to the employee if he or she had continued to hold the position held immediately before that reassignment. A reassignment increase upon return to the previous position (or comparable position) under this paragraph is not authorized. (See § 9901.342(1) for rules governing pay setting for an employee who returns to an NSPS position after failure to complete a supervisory probationary period for a non-NSPS supervisory position.)

§ 9901.354 Setting pay upon promotion.

(a)(1) Except as otherwise provided in this section, upon an employee's promotion, the employee will receive an increase in his or her base salary equal to at least 6 percent, but the resulting base salary rate may not be lower than the minimum rate or higher than the maximum rate of the new pay band. The decision to grant a promotion increase exceeding 12 percent must be reviewed and approved by an official who is at a higher level than the official who made the initial decision, as determined by the Component, unless a higher increase is necessary to reach

the minimum rate of the new pay band or there is no official at a higher level in the organization.

(2) When an employee from a non-NSPS position is promoted to an NSPS position, the authorized management official shall first apply § 9901.353(e)(1) through (e)(3) to determine the employee's adjusted salary rate as if reassigned without a discretionary increase or decrease in pay. After apportioning the employee's adjusted salary between base salary and local market supplement or targeted local market supplement, the authorized management official will then increase the employee's salary rate as provided in § 9901.354(a)(1).

(b) The authorized management official may consider only the following criteria in determining the amount of the promotion increase:

(1) Critical mission or business requirements;

(2) Employee's past and anticipated performance and contribution;

(3) Specialized skills or knowledge possessed by the employee;

(4) Labor market conditions (including availability of candidates and the labor market rates for similar types of employees at the level represented by the pay band to which the employee is being promoted);

(5) Base salary rates paid to other employees in similar positions in the higher pay band; and

(6) Location of position.

(c)(1) If an employee's temporary promotion is made permanent without a break, the employee's base salary will remain unchanged. No additional promotion increase may be provided.

(2) When an employee returns from a temporary promotion to another NSPS position, the employee's current base salary rate must be reconstructed as if the employee had not been temporarily promoted. For this purpose, the employee will be deemed to have received performance pay increases under § 9901.342 and other increases in base salary under §§ 9901.344 and 9901.345 equal to the percentage value of such increases actually received by the employee during the temporary promotion. However, any such increases must be applied as if the employee